

**Before The  
Federal Communications Commission  
Washington, D.C.**

In the Matter of	)	
Amendment of Parts 2, 73, 74 and 90 of the	)	
Commission's Rules to Permit	)	ET Docket No. 03-158
New York Metropolitan Area	)	MB Docket No. 03-159
Public Safety Agencies to Use	)	
Frequencies at 482-488 MHz	)	

To: Office of the Secretary

**COMMENTS OF TRIBUNE TELEVISION COMPANY**

The following comments have been prepared on behalf of Tribune Television Company, licensee of WPHL-TV, channel 17, Philadelphia, Pennsylvania (herein "WPHL") in response to the Notice of Proposed Rulemaking (herein "Notice") in the above-referenced proceeding.

**INTRODUCTION**

In the Notice, the FCC proposes to permanently reallocate TV channel 16 (482 – 488 MHz) in the New York Metropolitan Area to the land mobile service for public safety communications. Since WPHL operates on adjacent channel 17 in an adjacent market, the Commission's Rules require that all land-mobile stations ultimately authorized to operate on frequencies within the TV channel 16 spectrum provide protection to WPHL. WPHL also holds a construction permit to operate its digital television (DTV) facility on channel 54 from a site very near its analog operation. Since its DTV channel assignment is out of the core band (channels 2 through 51), when the DTV transition period is complete it is expected that WPHL will ultimately revert to channel 17 for its DTV operations. For this reason, WPHL's interest in protection from interference from land-mobile facilities operating on adjacent-channel 16 extends beyond the protection of its analog operation during the DTV transition period.

In these comments, WPHL seeks clarification on certain portions of the Notice, expresses its concerns regarding other portions of the Notice and requests that any action that the Commission takes in this proceeding provide for protection of WPHL's existing analog TV operation on channel 17 as well as a fully maximized DTV facility that WPHL is likely to operate at the end of the DTV Transition.

One way to allay WPHL's concerns about its DTV operations is to sunset the requested allocation of channel 16 for land mobile public safety communications so that the allocation expires at the end of the DTV transition. At that point, the four former television channels re-allocated for public safety communications will, by definition, no longer be encumbered by incumbent broadcasters and the "urgent and immediate need" for additional spectrum capacity for public safety communications that lead the Commission to make the temporary channel 16 assignment in the first place will have been addressed.<sup>1</sup>

## **BACKGROUND**

In March, 1995, the Commission waived Parts 2 and 90 of its Rules to permit public safety agencies in the New York City metropolitan area to operate on frequencies within TV channel 16 on a conditional basis.<sup>2</sup> The March 1995 Order authorized land-mobile operations for public safety agencies in the five boroughs of New York City as well as agencies in Nassau, Suffolk and Westchester Counties in New York and Bergen County in New Jersey. It also specifically provided for protection of WPHL's analog TV operation on channel 17. This protection was afforded to WPHL based on limitations on the antenna height and effective radiated power of public safety base stations and on limitations on the effective radiated power and permissible operating area for mobile stations.<sup>3</sup>

With respect to WPHL's analog TV operation, all of the base stations ultimately constructed to operate on frequencies within TV channel 16 in the New York City area met the requirements of 47 C.F.R. § 90.309(a) Table E. In addition, the March 1995 Order included restrictions on mobile station ERP and operating area that provided for a 0 dB protection ratio at the WPHL-TV Grade B contour based on a 5-mile separation between the WPHL-TV Grade B contour and a 30-mile circle about the Empire State Building.

## **CONCERNS**

The New York Metropolitan Advisory Committee now has petitioned the Commission to make permanent the allotment of TV channel 16 to public safety land

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<sup>1</sup> See Notice ¶ 2.

<sup>2</sup> See Order, *Waiver of Parts 2 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488MHz on a Conditional Basis*, FCC 95-115, 10 FCC Rcd 4466, released March 17, 1995.

<sup>3</sup> Base stations east of the Hudson River were limited to an effective radiated power of 225 Watts at an antenna height of 152.5 meters (500 feet) above average terrain. Base stations west of the Hudson River were further limited, but it appears that none were ever licensed. Mobile stations were limited to an effective radiated power of 100 Watts if operating in areas east of the Hudson River and 10 Watts if operating in areas west of the Hudson River. Mobile station operations outside the geographic boundaries of counties where base stations were authorized were limited to within a 30-mile radius of the Empire State Building.

mobile communications on the same basis that it was previously permitted in the March 1995 Order. Although WPHL believes that land-mobile operations in the New York metropolitan area on frequencies within TV channel 16 can operate without harmful interference to WPHL's present operations, it is concerned that permanent re-allocation of TV channel 16 to public safety land mobile operations on the same protection basis as provided in the March 1995 Order may adversely affect WPHL's ultimate capability to operate its DTV station on channel 17.

When it acted in 1995, the Commission clearly was concerned about the impact of the waiver request on future DTV allotments in and around the New York City area. Therefore, the grant was issued on an interim basis and specifically conditioned upon the status of any future DTV allotment on channel 16 in the New York City area. In the Notice, however, the Commission states that "we tentatively conclude that permanent reallocation of Channel 16 can be accomplished without adversely affecting existing television operations or our plans for implementation of digital television." Notice ¶ 9.

WPHL questions this conclusion. In heavily congested portions of the country like the Northeast Corridor, every change in the DTV table produces a daisy-chain of related changes in numerous adjacent markets. Thus, to the extent the Commission limits its analysis to only the New York City area, it ignores the impact this proposed permanent allocation will have on nearby markets.

WPHL is specifically concerned that once the channel 16 operations are allocated on a permanent basis to land-mobile, its ability to maximize its DTV channel 17 operation or even replicate its present DTV service area will be hindered. As noted above, WPHL's DTV allotment is on channel 54. Since the station presently operates in analog mode on channel 17, it appears likely that WPHL will revert back to channel 17 as its DTV assignment at the end of the transition. In the direction of New York City, the present WPHL-DT, 41 dBu [F(50,90)] contour on channel 54 extends *beyond* the WPHL-TV Grade B contour by approximately 7 kilometers (4.3 miles). Because of this, if WPHL-DT reverts to channel 17 at the end of the transition and transfers its present DTV coverage area to channel 17 or seeks to maximize its DTV coverage, the restrictions in the March 1995 Order on mobile station operation (i.e. within a 30-mile radius of the Empire State Building) will not provide the five-mile buffer between the mobile operations on channel 16 and WPHL-DT's protected contour on channel 17.

Furthermore, WPHL is concerned that once the land-mobile operations granted on an interim basis in the March 1995 Order are made permanent, they will require protection from interference from a future WPHL DTV facility on channel 17. Given that the March 1995 Order contained explicit protection for WPHL's operations, such a result would clearly contravene the Commission's intent. With respect to this new land-mobile allotment, would the Commission permit WPHL to maximize its DTV operation on channel 17 or will such an application now be precluded by the

provisions of 47 CFR 73.623(e)? To remain consistent with the original March 1995 Order, the Commission should clearly permit full DTV maximization on channel 17.

Finally, WPHL is concerned that the permanent re-allotment of TV channel 16 for public-safety land-mobile operation in the New York City area may become a beginning point for further geographic expansion of TV channel 16 land-mobile operations beyond the New York area. Such a result could further restrict WPHL and other full service TV and/or DTV stations from making optimum use of their assigned channels. A case in point is raised by the Petitioners themselves when they point out that numerous land-mobile stations have been authorized on a waiver basis on frequencies within TV channel 19 in northern New Jersey, even though the Commission's Rules restrict use of channel 19 by land-mobile services to within a 50-mile radius of Philadelphia.

Based on a search of the Commission's master frequency database, it appears that no less than 39 land-mobile facilities are active on frequencies within TV channel 19 at locations in New Jersey that are beyond the 50-mile radius of Philadelphia specified in Section 90.303 of the Commission's Rules; many of these are well outside of this 50-mile radius. The petitioner's cite the Commission's authorization of DTV channel 18 at Newton, New Jersey as an example of how land-mobile facilities can be harmed if not provided protection from new TV and DTV allotments. WPHL points out that the other side of the issue is that if land-mobile stations continue to be authorized further and further outside the originally assigned area of operations, it is inevitable that future development of DTV facilities will be impacted if they are required to protect such land-mobile stations.

In fact, using channel 19 as an example, the Nassau County Police Department itself has requested a waiver of the Commission's Rules to permit it to commence land-mobile operations on channel 19. Subsequent to the Nassau County Police Department's request, a commercial entity, Direct Connect, Inc., also filed an application and waiver request for similar use of channel 19 in and around Nassau County. So, in the case of channel 19, what was originally a Philadelphia land mobile allotment has migrated well outside of its original area of authorization and into northern New Jersey. This migration may continue across the Hudson River into Nassau County, New York, notwithstanding the fact that the Commission's Rules restrict such operations to within 50 miles of the Philadelphia reference point.

One way to avoid these problems is to sunset the proposed allocation of channel 16 for land-mobile public-safety communications so that it terminates some specified period of time (*i.e.*, 90 or 180 days) after the Commission determines that the DTV transition has ended in the New York City market. Such a limitation would reconcile the Commission's interest in addressing public-safety spectrum needs with its goal of encouraging the DTV transition, including the provision of maximized DTV service. First and most importantly, the public-safety needs for spectrum will be substantially reduced (if not eliminated) at the end of the transition because the 700

MHz channels that have been reallocated for public-safety use (TV Channels 63, 64, 68 and 69) will no longer be encumbered by incumbent broadcasters. Second, such a limit would be consistent with the Commission's original concern for protecting DTV allocations in the March 1995 Order when it originally allowed public safety-usage of channel 16.

For these reasons, WPHL urges the Commission to consider sunsetting the proposed reallocation of channel 16 for public-safety land-mobile use to coincide with the end of the DTV transition in the New York City market. Alternatively, the Commission should commit to revisiting the need for a permanent public-safety allocation on channel 16 in and around New York City at the end of the transition. WPHL is concerned that the decision to shrink the core television spectrum by reallocating channels 52-69 will create allocation and service area problems for stations at the end of the DTV transition in the highly congested Northeast Corridor.

#### **CLARIFICATIONS REQUESTED**

WPHL seeks clarification on the following issues.

##### ***Extent of Geographic Area Where Land-Mobile Base Stations may be Constructed and Where Mobile Stations May Operate***

Appendix A of the Notice contains Rules the Commission proposes to adopt in this proceeding. In Appendix A, the Commission proposes to add language to Section 2.106 that frequencies in the Public Safety Radio Pool within the band 482-488 MHz (TV channel 16) will be made available "at, or in the vicinity of, New York City and Nassau and Suffolk Counties, New York." It is presumed that the language "at, or in the vicinity of" will be defined based on amendments to Sections 90.303 and 90.305 of the Commissions Rules, yet the Commission has not provided the specific language it proposes to use in amending these sections. WPHL seeks clarification of what is meant by "in the vicinity of" New York City and Nassau and Suffolk Counties, New York.

The March 1995 Order granting use of TV channel 16 for public safety land-mobile operations authorized base station operations in the five boroughs of New York City as well in Nassau, Suffolk and Westchester Counties in New York and Bergen County in New Jersey. It also authorized mobile operations in these counties as well as in any areas outside of these counties provided that those areas were within a 30-mile radius of the Empire State Building. In the Report of the Police Department of the City of New York, included as Appendix B of the Notice, it appears that the Petitioners have requested the Commission to make permanent the allotment of TV channel 16 in the same areas and with the same restrictions as previously granted on an interim basis. Yet in paragraph 17 of the Notice, it appears that the Commission's proposed modifications to Sections 90.303 and 90.305 will restrict base station locations and mobile operations to within the geographic boundaries of the five

boroughs of New York City and Nassau and Suffolk Counties. WPHL requests that the Commission clarify which areas it intends to specify for base and mobile station operations.

Furthermore, WPHL believes that the meaning of the language “in the vicinity of” must be clearly defined for both base and mobile stations. For the reasons discussed above, in no case should the Commission define the area to be greater than that previously authorized on an interim basis. If the Commission’s intent is to limit this area to within the geographic boundaries of the five boroughs of New York and Nassau and Suffolk County, WPHL urges the Commission to adopt clear language in Sections 90.303 and/or 90.305 specifying this limitation.

***Criteria for Protection of Land Mobile Stations by Full-Service TV and DTV Stations***

If the Commission makes permanent the allotment of TV channel 16 for public safety land-mobile operations in the New York City area, under what criteria will full service TV and DTV stations be required to protect these land-mobile operations? Specifically, as noted above it seems likely that WPHL will end up with its DTV operations on channel 17. However, under the provision of Section 73.623(e) of its Rules, the Commission states that it will not accept “applications to change the channel or location of authorized DTV stations that would use channels 14-20 where the distance between the DTV reference point as defined in section 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation.” Since the WPHL DTV reference point is only 132 km from the New York City reference point listed in Section 90.303, significantly less than the 176 km required by Section 73.622(d), WPHL is concerned that this permanent allocation could severely impact its use of channel 17 for DTV operations.

WPHL requests that the Commission clarify how Section 73.623(e) of its rules will apply to future use of channel 17 for its DTV operations. It further requests that the Commission condition any permanent re-allotment of TV channel 16 in the New York City area on the right of WPHL to maximize future DTV facility on channel 17 without regard to protection of channel 16 land-mobile stations and without the need for WPHL to seek waivers of the Commission’s rules with respect to protection of such TV channel 16 land-mobile operations.

## **CONCLUSION**

For the foregoing reasons, WPHL urges the Commission to sunset the proposed reallocation of channel 16 to coincide with the end of the DTV transition. Additionally, WPHL requests that the Commission not make permanent any re-allotment of TV channel 16 to public safety land-mobile operations in the New York City area unless such allotment is at least as restrictive as that made on an interim basis in the March 1995 Order. Finally, WPHL requests that if the Commission makes permanent the re-allotment of TV channel 16 to public safety land-mobile service that it do so with the condition that WPHL may operate a maximized DTV facility on channel 17 without regard for protection of land-mobile stations operating on frequencies within adjacent TV channel 16 and without the need to seek waivers from the Commission.

Respectfully submitted,

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